

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICOLE L. YOUNG,

Defendant-Appellant.

UNPUBLISHED
September 4, 2003

No. 239997
Wayne Circuit Court
LC No. 01-013978

Before: Hoekstra, P.J., and Fitzgerald and White, JJ.

WHITE, J. (*dissenting*).

The Supreme Court has recently made clear that “[m]anslaughter, in both its forms, is an inferior offense of murder within the meaning of MCL 768.32. Therefore, an instruction is warranted when a rational view of the evidence would support it.” *People v Mendoza*, 468 Mich 527, 548; 664 NW2d 685 (2003). In the instant case, the trial court determined, and the majority agrees, that a rational view of the evidence would not support a conviction of voluntary manslaughter. I respectfully dissent.

I disagree with the trial court’s application of *People v Pouncey*, 437 Mich 382; 471 NW2d 346 (1991), and *People v Eagen*, 136 Mich App 524; 357 NW2d 710 (1984). First, *Eagen, supra*, did not adopt the rule that adultery on the part of an unmarried lover cannot provide adequate provocation. *Eagen* recognized that the rule might be appropriate in the case of a longstanding relationship comparable to husband and wife. Second, while insulting words may not constitute adequate provocation, words of an informative nature have been considered adequate provocation. *Pouncey, supra* at 391, citing LaFave & Scott, Criminal Law, § 76, pp 576-577. Here, the words creating the provocation were Henderson’s words informing defendant that she was having a relationship with Reynolds and that she was pregnant, and Reynolds’ confirmation of the relationship and statement that he was leaving to go see Henderson other woman. Additionally, the jury was free to believe defendant’s testimony that Reynolds pushed her on the bed, which while insufficient provocation in and of itself, could be considered as part of the total circumstances.

I conclude that defendant’s statement and testimony provided adequate support for a voluntary manslaughter instruction. Defendant had learned that her boyfriend of four years was being unfaithful and had made another woman pregnant. During defendant’s second conversation with the other woman, Reynolds came into the house. When defendant confronted him with the situation, he mocked her, taunted her and said he was leaving to go to the other

woman. While there was evidence to support a different construction of the facts, or that defendant was in full possession of her faculties and that her thought process was not distorted, it was a jury question whether the killing was committed in the heat of passion, caused by an adequate provocation, without a lapse of time during which a reasonable person could control his passions. *Pouncey, supra* at 388.

The remedy in such a situation¹ is to remand for a new trial on the charge of second-degree murder, the defendant having been acquitted of first-degree murder, or the entry of a conviction of voluntary manslaughter, at the prosecution's option. *People v Gridiron*, 185 Mich App 395,404; 460 NW2d 908 (1990), conviction vacated on rehearing on other grounds 190 Mich App 366; 475 NW2d 879 (1991), amended 439 Mich 880; 476 NW2d 411 (1991).

/s/ Helene N. White

¹ I observe that the prosecution does not argue that the failure to give the instruction was harmless, only that the evidence did not support the instruction.